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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 670.

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SANA LABORATORIES, INC., JAMES A. IORIO and EDWARD JAMES IORIO,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF FOR THE PETITIONERS.

HARLAN BESSON,
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No. .....

SANA LABORATORIES, INC., JAMES A. IORIO and EDWARD JAMES IORIO, Petitioners,

vs.

THE UNITED STATES OF AMERICA.

(See R. 1 for title in Court below. Title given conforms to record printed by Clerk of this Court.)

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Sana Laboratories, Inc., a corporation of the State of New Jersey, James A. Iorio and Edward J. Iorio, respectfully submit their petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Third Circuit in the above entitled proceeding.

History of the Case.

On December 3rd, 1936 (R., p. 12) petitioners commenced an independent proceeding by verified petition and order to show cause in the United States District Court for the District of New Jersey, before any indictment was found, seeking the suppression of evidence and the return of certain alcohol, records, documents, books and papers seized by agents and inspectors of the Alcohol Tax Unit of the Treasury Department of the United States on November 7th, 9th and 10th, 1936, on the premises of Sana Laboratories, Inc., located at 574-576 Jeanette Street, Union City, New Jersey. The United States Attorney to whom the order to show cause was directed appeared in the proceeding and resisted the application. On April 7th, 1937, a memorandum opinion was handed down in the United States District Court for the District of New Jersey by Judge Fake on a preliminary procedural question. This directed the presentation of an order to take testimony which was allowed on December 20, 1937 (R., p. 29). Testimony was taken on March 3 and 7, 1939. Judge Fake handed down a further memorandum decision on March 25, 1940 (R., p. 5) denying the petition to suppress but ordering the return of the seized records and papers, and on June 10, 1940 an order was entered in conformity with this determination. On March 31, 1938 an indictment was found against the petitioners.

Thereupon an appeal from this order was taken to the United States Circuit Court of Appeals for the Third Circuit which on the 6th day of November, 1940, filed an opinion by Hon. Herbert F. Goodrich, Circuit Judge, affirming the judgment below. A petition for rehearing was filed, which was denied on December 2, 1940. This petition is

filed to obtain review of the decision of the Circuit Court of Appeals.

Statement of Facts.

The facts have been stated by the Hon. Herbert F. Goodrich, Circuit Judge, in the opinion filed in the Court below, in substantial agreement with the statement which follows (R., p. 35). There is no factual controversy involved except upon the question of consent and this was not discussed in the opinion by the Circuit Court of Appeals.

The petitioner, Sana Laboratories, Inc., a New Jersey Corporation, was in November, 1936, a holder of a permit to use specially denatured alcohol, Form 1481 under Title 111 of the National Prohibition Act, Permit No. SDA—N. J.-1012, in the course of the manufacture of certain mouth washes, hair tonics, lilac lotions, perfumes, etc., as is more specifically set forth in said permit. It was allowed to withdraw under permit, specially denatured alcohol for this purpose, and keep it in a storeroom on the premises located at 574-576 Jeannette Street, Union City, New Jersey, where it conducted its business.

On Friday evening, November 6, 1936, an investigator of the Alcohol Tax Unit of the Treasury Department who had been keeping Sana's plant in Union City under observation for some days, saw a truck take on 6 drums of alcohol at the plant, followed the truck about a half a mile from the plant, arrested the driver and seized the drums of alcohol from which the serials numbers had been removed. The next morning, Saturday, November 7, at about 8 A. M., this investigator accompanied inspectors from the Alcohol Tax Unit entered the Sana plant after having been admitted by Alfred Iorio, a feeble minded man, brother of

the petitioner, James A. Iorio, in response to raps on the door. They had no warrants of arrest nor did they have a search warrant. No one was on the premises at the time but the said Alfred Iorio and obviously no crime was being committed on the premises at the time. Nevertheless, the government agents arrested Charles Iorio, Paul Losick and Frank Eckert as soon as they entered the premises. The petitioner, James A. Iorio, who lived near the plant was sent for and arrested. He denied having any connection with the business. When it appeared that neither he nor any of the others arrested could locate the alcohol manufacturing records and the keys to the alcohol vault, the bookkeeper, Florence Losick was sent for (but not arrested) and she supplied these records and posted them currently. The agents seized and trucked away 17 drums of alcohol found in the vaults on the premises and at about eleven o'clock took Charles Iorio and James A. Iorio, Paul Losick and Frank Eckert to Newark, ten miles distant, for questioning and arraignment before the United States Commissioner. They were fingerprinted and held to bail after formal complaints had been filed against them. Other Agents remained on the premises and made a search which has been described by Dr. James A. Iorio, petitioner herein, as follows:

> "I noticed in the office of the laboratory, invoices, bills, billheads and letters, and drawers—letters scattered all over the different sections of the office, on tables and on desks. I entered into the laboratory and I found upon the counter a bottle of strychnine which was laying on the counter; half of it had been spilled on the counter" (R., pp. 49-50).

The government agents then took the manufacturing records from Miss Losick and removed them to Newark, New Jersey.

The following Monday, November 9th, two days later, the agents returned and placed in a box invoices, and bills for materials used in the manufacture and sale of alcohol preparations. Dr. James A. Iorio at that time objected to the agents taking the box because no one was on the premises in authority. Whereupon the agents sealed it and left it over night. The next day, Tuesday, November 10th, the agents took the box from Dr. James A. Iorio and his son Edward J. Iorio after Edward J. Iorio had consulted his counsel and had been advised as follows:

> "Well, if they have to take them you can't do anything about it." (See R. 51, fol. 21.)

The books and records taken were the property of Sana Laboratories, Inc.

On April 14, 1937, the government filed a libel for forfeiture in four counts, two counts against 6 drums of alcohol, seized on Friday evening, November 6th, 1936, and two counts against the 17 drums of alcohol, seized on the premises of Sana plant the following day (R., p. 25). On March 2, 1938, the United States District Court for the District of New Jersey entered a decree forfeiting the 6 drums mentioned in the first two counts of the libel and dismissing the libel as to the 17 drums seized on the morning of November 7th, 1936 (R., p. 10). The claimant, petitioner herein, Sana Laboratories, Inc., challenged this seizure on the ground that it was unlawful in the answer filed in the libel proceeding. It was contended in the District Court upon the application for suppression that this decree was *res adjudicata* on the question of the lawfulness of the seizure. Judge Fake ruled adversely on this contention and the Circuit Court of Appeals for the Third Circuit did not mention the question in its opinion although the question was raised in that Court by the petitioners.

An indictment, naming as defendants the three appellant petitioners and eleven other persons charging conspiracy to defraud the United States by diversion of tax free alcohol for taxable purposes, was returned March 31, 1938. The indictment alleged, as one of the overt acts, the diversion of alcohol on the evening of November 6th, 1936, and also alleged that the plans of the conspirators included Sana's maintenance of false books, records and invoices. (R., p. 30).

Questions Presented.

1. Does the right of government agents to inspect the operations, manufacturing records and invoices on the premises of a permittee authorized to use specially denatured alcohol, also authorize, as an incident, the right to arrest without warrant persons on the premises and to summarily seize without search warrants the manufacturing records, invoices and other records of the permittee and remove them from the premises and use them or information obtained from them in evidence in criminal proceedings against the petitioners. (This it is contended violates the constitutional rights of the permittee and other persons as defined by *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385; *Boyd* v. *United States,* 116 U. S. 616, 6 Sup. Ct. 524, 29 Law Ed. 746; *Go-Bart Importing Co., etc., et al.* v. *U. S.,* 282 U. S. 344.)

2. Was the decree in the libel proceeding acquitting the 17 drums of alcohol seized on the Sana Plant on the morning of November 7th, 1936, *res adjudicata* on the question of the validity of the other seizures made on the same day and as part of the same transaction?

Reasons Relied On for the Allowance of the Writ.

It is respectfully contended for the petitioners that the court below has decided a Federal question in a way probably in conflict with applicable decisions of this Court and that it has decided an important question of Federal law which has not been but which should be settled by this Court. The Court below held that because there was no unlawful entry by the government agents upon the premises preceding the arrests, searches and seizures, that their right to inspect the premises justified no further relief than the return of the seized documents which cured any wrong which might have been done, and that the removal of papers and records from the premises which the government agents were, under the circumstances, entitled to inspect upon the premises, did not render sacrosanct information secured from these papers because such information was lawfully open to the government upon inspection. To support this decision, the court below cited *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385 and in its opinion in the case subjudice said:

> "It is only knowledge gained by the governments own wrong which cannot be used" (R. 38 and 39).

It is respectfully contended that this reasoning is logically fallacious and in direct conflict with the judicial determination in the *Silverthorne Lumber Co.* case, *supra,* the precise language of the opinion in which case on this point is as follows:

> "* * * The essence of a provision forbidding the acquisition of evidence in a certain way is not merely evidence so acquired shall not be used before the court, *but that it shall not be used at all.* * * *" (Italics by counsel.)

It is further respectfully urged that the Court below placed undue emphasis on the importance of the fact that the element of unlawful entry into the Sana premises was lacking. This Court in the case of *Boyd* v. *United States, supra,* clearly points out the breaking of doors and the forcing of an entry are not vital factors. (See opinion in that case at page 630 and at 635.)

Even assuming that the presence of the element of unlawful entry, in the case *sub judice,* is essential to a finding that the search and seizure made were unlawful, the rule laid down in the Six Carpenters' case (1610) 8 Coke 146a, 77 Eng. Reprint 695, it is respectfully urged, is properly applicable to the situation herein. It was held in that case:

> "* * * it was resolved when an entry, authority or license is given to anyone by the law, and he doth abuse it, he may be a trespasser ab initio; * * *"

The seizure of the books and papers without a search warrant was an abuse of the authority given to enter and inspect and the entry becoming a trespass *ab initio* was tantamount to an initial unlawful entry.

No case has been discovered by counsel where the precise question involved has been before this Court. This Court in the *Go-Bart* case, *supra,* has stated with approval an opinion in the United States District Court for the Southern District of New York in the case of *Kraus* v. *United States,* 270 F. 578. This case involved a search without warrants of premises used by an alcohol permittee. The court in that case held that the search was illegal and the seized papers should be returned and further directed that no testimony or evidence of any transaction recorded in any of the papers seized should be offered upon the trial

unless the respondents could show they got the information independent of their wrongful possession.

It is respectfully contended that the Court below erred in its determination that the information contained in the papers seized might be used even though the seizure of them was unlawful and that whatever wrong might have been done has been cured by a direction for the return of the seized papers and records. It is respectfully urged that the effect of its decision is to sanction a method of enforcement repugnant to the 4th and 5th Amendments to the Constitution and in conflict with the interpretation of the Constitution of this Court in the Silverthorne, Go-Bart, and Boyd cases, *supra.*

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said Court to certify the case to this Court for review and determination, as provided by Section 240 (a) of the Judicial Code, 28 U. S. C. A. Sec. 347 (a), and that your petitioners may have such other and further relief in the premises as this Court may deem proper.

HARLAN BESSON,
Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. .

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Petitioners,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONERS.

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(See R. 1 for title in Court below. Title given conforms to record printed by Clerk of this Court.)

BRIEF FOR PETITIONERS.

Opinions Below.

An opinion was rendered in this proceeding by Judge Guy L. Fake, of the United States District Court of New Jersey, on March 25th, 1940 (R., p. 5). An opinion was rendered on November 6th, 1940 in the United States Circuit Court of Appeals for the Third Circuit, in this cause by Hon. Herbert F. Goodrich, Circuit Judge, affirming order below, but for reasons stated in that opinion (R., p. 35). Neither of these opinions have been reported.

Basis of Jurisdiction.

This Court's jurisdiction to entertain the petition for certiorari presented and grant same is based upon the provisions of Judicial Code Section 240 (a), 28 U. S. C. A.

Section 347 (a). The proceeding involves the application and interpretation of the Fourth and Fifth Amendments to the Constitution of the United States in connection with a factual situation which petitioners herein charge entitles them to relief against an unlawful search and seizure by Agents of the United States Treasury Department. The judgment of the Circuit Court of Appeals for the Third Circuit was rendered on November 6th, 1940. A petition for rehearing was presented to the said Court within fifteen days after November 6th, 1940, which petition was denied on December 2nd, 1940. The judgment below affirmed an order of the District Court for the District of New Jersey, ordering the return of the seized papers and records but denying the suppression of information obtained from them as evidence in criminal proceedings against the petitions. Petitioners seek the type of relief given in *Go-Bart Importing Co., etc., et al.* v. *United States,* 282 U. S. 344, *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385, *United States* v. *Lefkowitz,* 285 U. S. 452. They respectfully contend that the decision of the Circuit Court of Appeals conflicts with the above cited decisions of this Court which it is urged are properly applicable in this case.

Statement of the Case.

The facts have been stated in the petition but for convenience the facts as stated by Circuit Judge Goodrich, delivering the opinion of the Court below, are now repeated here (R., p. 36).

> "This is an appeal from a denial of a petition praying for the suppression of certain evidence alleged to have been illegally seized by government agents. The petition was filed on behalf of Sana

Laboratories, Inc., a permittee authorized to withdraw specially denatured alcohol used by it in the preparation of medical and chemical products, and on behalf of James A. Iorio and Edward J. Iorio.

"On Friday evening, November 6, 1936, an investigator of the Alcohol Tax Unit who had been watching Sana's plant followed and seized a truck which had taken on six drums of alcohol at the plant. The serial numbers had been removed from these drums. The next morning he returned to the plant with other agents and they were all admitted by the janitor. The agents on that day took from the plant the manufacuring records and purchase and sales books and placed under arrest several persons. The agents had no warrant either for the arrests or the seizure of the documents. The persons arrested were brought before a commissioner later that day and were released on bail that night. On the Monday following the agents returned to the plant and collected invoices covering materials used in the manufacture of preparations containing alcohol and certain sales records. These records were placed in a sealed box and were removed from the premises by the agents on the next day.

This petition was filed in the court below on December 3, 1936. Affidavits were filed by both sides and hearing was held. On June 10, 1940 the court below entered its order denying the prayer of the petition. In the meantime, an indictment was returned on March 31, 1938 against Sana Laboratories, Inc. and certain individuals, including James A. Iorio and Edward J. Iorio, charging a conspiracy to defraud the United States of tax."

It was the testimony of petitioner, Edward J. Iorio, that not only were invoices and papers taken by the seizing officers which concerned the use of alcohol but invoices re-

lating to other phases of the business were removed from the premises (R., p. 51, fol. 21).

The right of the seizing officers to inspect the premises was limited to the right to inspect the operation of the plant during usual business hours and to inspect the manufacturing records and certain other records and invoices. This authority was derived from Articles 148 and 167 of Regulations 3, of the Bureau of Industrial Alcohol, U. S. Treasury Department, then in effect (See Appendix, p. 29, etc.).

The crux of the opinion of the Court below is set out in the following paragraph:

> "The government officers, then, clearly had the right to inspect the books and records and use information gathered therefrom. *If the subsequent seizure and removal from the premises were unlawful because the petitioners were entitled to the possession of the documents, this wrong has been cured by the return of the papers under the order rendered by the trial court.* But the removal from the premises of papers which government agents were, under the circumstances, entitled to inspect upon the premises did not render sacrosanct information secured from these papers because it was lawfully open to the government. It is only knowledge gained by the government's own wrong which cannot be used. Silverthorne Lumber Co. *v.* United States, 251 U. S. 385, 392 (1920)." (Italics by counsel.)

This conclusion it is respectfully contended is logically unsound and is really in conflict with the opinion of this Court in *Silverthorne Lumber Co* v. *United States, supra,* and the opinion of the court in *Kraus* v. *United States,* 270 Fed. 578 (D. C. S. D. N. Y., 1921), cited with approval by this court in its opinion in *Go-Bart* v. *United States, supra.*

Summary of Arguments.

I. The seizing officers had no lawful right to seize the records and papers involved without a search warrant.

II. The seizing officers became trespassers *ab initio* by abusing the authority given them by unlawfully seizing the records and papers on the permittee's premises.

III. The records and papers involved having been unlawfully seized, the use of them, or information obtained from them, in proceedings against the petitioners should be suppressed.

IV. The seized records and papers were not taken by consent.

V. The decree in the libel proceedings adjudicating the return of the alcohol seized on the permittee's premises on November 6, 1936, was *res adjudicata* on the question of the unlawfulness of the search and seizure.

ARGUMENT.

POINT I.

The seizing officers had no lawful right to seize the records and papers involved without a search warrant.

The authority of the government agents to enter the premises of the permittee involved herein was derived from the regulations cited in the foregoing petition which have the operation of law (See appendix, p. 29). Inasmuch as these provisions are in derogation of the rights reserved under the Fourth and Fifth Amendments, they must be strictly construed. The case of *Kraus* v. *United States,* 270 Fed. 578 (D. C. S. D. N. Y.), opinion by Judge

Hand, is one concerning an entry into permit premises by government agents. The well considered opinion therein has been cited by this Court in the case of *Go-Bart Importing Co. etc., et als.* v. *United States,* 282 U. S. 344. In the *Kraus* case, *supra,* the searching and seizing officers sought to justify their acts by the right of inspection given by the terms of a permit conditioned as in the case *sub judice.* In dealing with this contention, Judge Hand said:

> "It is quite true that the officers had the right to inspect the records, and therefore, the right to enter the place where they were kept. I shall for argument's sake further assume that, if the records were kept as required, they had the right to inspect such other papers on the premises as recorded transactions which should have been transcribed into the records. It does not, however, follow from these concessions, that they had the right to break and enter, though the petitioners wrongfully refused to allow them to inspect, nor does it either follow that they had the right to seize the records and papers after an inspection.
>
> "To take up the last first, it is clear that the right to inspect did not give the right to seize, and this is enough to require a return of the papers, though not of any copies taken or of any other information obtained from their custody. Since Silverthorne Lumber Co. *v.* U. S., *supra,* and Weeks *v.* U. S., *supra,* this right to return copies in the hub of the case. * * *"

The court below in its opinion held that whatever wrong may have been done the petitioners by these unlawful seizures and removal from the premises was cured by the return of the papers under the order rendered by the trial court. It would seem therefore, that there is no real controversy about the soundness of the proposition

that the papers and records were unlawfully seized and it is only the consequences of such unlawful seizures which require further consideration.

POINT II.

The seizing officers became trespassers *ab initio* by abusing the authority given them by unlawfully seizing the records and papers on the permittee's premises.

In the court below emphasis was laid on the proposition that in the instant case there was no unlawful entry. The asserted absence of that element in this case was the point in distinction asserted as rendering inapplicable, the rule expressed in the case of *Kraus* v. *United States, supra.* It is respectfully submitted, however, that by so doing the learned Judge overlooked the fundamental principle laid down in the *Six Carpenters'* case (1610) 8 Coke 146a, 77 Eng. Reprint 695, wherein it was said:

> * * * "it was resolved when an entry, authority or license is given to anyone by the law, and he doth abuse it, he may be a trespasser *ab initio;* * * *."

Thus it is respectfully contended that the unlawful seizures of the papers and records and the arrests without warrant of persons on the premises constituted an abuse of the authority to inspect and the acts of the seizing officers in so doing made them trespassers *ab initio.* It follows therefore that their entry upon the premises may properly be construed as an unlawful entry and tantamount to a breaking and entering into the premises. This reasoning would bring the instant case clearly within the rule laid down in the case of *Kraus* v. *United States, supra.*

POINT III.

The records and papers involved having been unlawfully seized, the use of them, or information obtained from them, in proceedings against the petitioners should be suppressed.

In the opinion rendered by the court below, the case of *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385 was cited by the court in support of the proposition that the information secured from the seized records and papers was not sacrosanct because it was lawfully open to the government upon inspection. It was said in the instant case by Circuit Judge Goodrich, *inter alia*:

> "The government officers, then clearly had the right to inspect the books and records and use information gathered therefrom. *If the subsequent seizure and removal from the premises were unlawful because the petitioners were entitled to the possession of the documents, this wrong has been cured by the return of the papers under the order rendered by the trial court.* But the removal from the premises of papers which government agents were, under the circumstances, entitled to inspect upon the premises did not render sacrosanct information secured from these papers because it was lawfully open to the government. It is only knowledge gained by the government's own wrong which cannot be used. Silverthorne Lumber Co. *v.* United States, 251 U. S. 385, 392 (1920)." (Italics by counsel.)

It is respectfully urged that this represents a misapplication of the principle laid down in the *Silverthorne Lumber Co.* case, *supra.* In that case a corporation was involved. As in the case at bar, its premises were invaded by government agents without a search warrant. They arrested vari-

ous officers of the corporation and after they had removed them from the premises, proceeded with an exploratory search as result of which they obtained a number of documents, books of account, records and papers, which they took into custody and examined. This action was challenged in the United States District Court. As a result, the court made an order directing the return of the originals and impounded photographs and copies of them as well. In Grand Jury proceedings, involving the corporation and its officers, a subpoena *duces tecum* was issued for the original documents, using the information obtained as a result of this search to determine what would be required. The Corporation and the individual defendants refused to produce the papers and were brought before the District Court on contempt charges. The corporation was found guilty and fined $250.00 and the individuals were sentenced to prison. Mr. Justice Holmes, speaking for the Supreme Court, severely criticized this procedure. He said *inter alia*:

> "The proposition could not be presented more nakedly. It is that although of course its seizure was an outrage which the government now regrets, it may study the papers before it returns them, copy them, and then may use the knowledge that it has gained to call upon the owners in a more regular form to produce them; that the protection of the Constitution covers the physical possession but not any advantages that the government can gain over the object of its pursuit by doing the forbidden act. Weeks *v.* United States, 232 U. S. 383, to be sure, had established that laying the papers directly before the grand jury was unwarranted, but it is taken to mean only that two steps are required instead of one. *In our opinion such is not the law. It reduces the 4th Amendment to a form of words.* 232 U. S. 93. The

essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the government's own wrong cannot be used by it in the way proposed. The numerous decisions, like Adams *v.* New York, 192 U. S. 585, holding that a collateral inquiry into the mode in which evidence has been got will not be allowed when the question is raised for the first time at the trial, are no authority in the present proceeding, as is explained in Weeks *v.* United States, 232 U. S. 383, 394, 395. Whether some of those decisions have gone too far or have given wrong reasons it is unnecessary to inquire; the principle applicable to the present case seems to us plain. It is stated satisfactorily in Flagg *v.* United States, 233 Fed. 481, 483. In Linn *v.* United States, 251 Fed. 476, 480, *it was thought that a different rule applied to a corporation, on the ground THAT it was not privileged from producing its books and papers. But the rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way.*" (Italics by counsel.)

The case of *Go-Bart Importing Co.* v. *U. S.*, 282 U. S. page 344, *supra,* follows closely the reasoning of the *Silverthorne* case. A corporation and two individuals were involved. The court plainly declared that the evidence unlawfully obtained must be suppressed, as to both the corporation and the individuals.

In the instant case, great stress was laid by the court below upon the asserted absence of an unlawful entry into

the permit premises. This objection, it is respectfully argued, has already been met by the application of the doctrine of trespass *ab initio*. However, if it be conceded, but not admitted, that this doctrine is inapplicable, nevertheless, in the leading case of *Boyd* v. *United States*, 116 U. S. 616, this court clearly points out the breaking of doors and the forcing of entries are not vital factors. Mr. Justice Bradley, delivering the opinion of the court in that case said *inter alia* at page 630:

> "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions, on the part of the Government and its employees, of the sanctity of a man's home and the privacies of life. *It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense;* but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense; it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." (Italics by counsel).

and again at page 635:

> "* * * Though the proceeding in question is divested of many of the aggravating incidents of

> actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose. It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely: by silent approaches and slight deviations from legal modes of procedure. *This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against stealthy encroachments thereon. Their motto should be obsta principiis."* (Italics by counsel.)

It is not amiss to repeat at this point the language of Mr. Justice Holmes in *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385 at page 392, which is in part:

> "* * * The essence of a provision forbidding the acquisition of evidence is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all. * * *"

It is submitted that the permit system contemplated no greater invasion of the permit holder's rights than that an inspection authorized by the regulations be allowed, and the denial thereof no greater penalty than a revocation of the Sana permit. See Art. 167 (Appendix, p. 29). The government was secured against loss of revenue by a substantial bond, which bond was conditioned upon compliance with the regulations. If there was to be a seizure, it could only be made on probable cause and by search warrant, in con-

formity with the Espionage Act. The case resembles in principle, *Taylor* v. *United States,* 286 U. S., page 1. The opinion of the court in that case declares in part:

> "* * * the agents had made no effort to obtain a warrant for making a search. They had abundant opportunity so to do and to proceed in an orderly way even after the odor had emphasized their suspicions; there was no probability of material change in the situation during the time necessary to secure such warrant. Moreover, a short period of watching would have prevented any such possibility.
>
> "We think, in any view, the action of the agents was inexcusable and the seizure unreasonable. The evidence was obtained unlawfully and should have been suppressed. See Carroll *v.* United States, 267 U. S. 132, United States *v.* Lefkowitz, decided April 11, 1932, 285 U. S. 452, ante, 877."

It is therefore respectfully urged that for the reasons given above, the court below erred in deciding that the use of the seized records, papers and information obtained therefrom in proceedings against the petitioners should not have been suppressed.

POINT IV.

The seized records and papers were not taken by consent.

There was no factual controversy in this proceeding except upon the contention by the government agents that the records and papers were taken by consent (R., p. 53, fol. 25) and the insistence by government agents in describing the arrests which they made as "detention" (R., p. 52, fol. 22).

The District Court based its denial of the relief prayed for by the petitioners on the ground that consent was given to the taking of them (See opinion R., at p. 7).

The Circuit Court of Appeals evidently preferred to rest its affirmance of the order of the District Court on another ground, for it made no mention in its opinion of the District Court's finding of consent. This point is mentioned here because it may be suggested in a reply brief.

Both Dr. Iorio and Edward James Iorio who were alleged to have been the persons giving consent testified that no consent was given (See R., p. 49 to p. 51, fols. 17, 18, 19, 20 and 21). It is argued for the petitioners that peaceful submission to the demands of law officers or acts done under protest could not be construed as consent, and there was a presumption of implied coercion which was recognized and applied in such cases by this Court. See *Amos* v. *United States,* (1921) 255 U. S. 313, and *Re Tri-State Coal and Coke Co.* (1918 D. C.), 253 Fed. 605.

It is respectfully urged that the element of consent or permission is not present in this case.

POINT V.

The decree in the libel proceedings adjudicating the return of the alcohol seized on the permittee's premises on November 6, 1936, was *res adjudicata* on the question of the unlawfulness of the search and seizure.

In the case of *Hipolite Egg Co.* v. *United States,* 220 U. S. 45, there was involved a proceeding *in rem* for forfeiture and condemnation of adulterated eggs. The corporation appeared as claimant. The Court held that by reason of the filing of a claim, jurisdiction was acquired over the

person of the egg company. (See last line of the opinion on page 60.)

In the leading case of *Coffey* v. *United States,* 116 U. S. 436, it was held, *inter alia*:

> "A judgment of acquittal in a criminal prosecution for a violation of the internal revenue laws, is conclusive in favor of the defendant, as claimant, of the property involved in a subsequent suit *in rem,* when, as against him, the existence of the same act or fact involved in the criminal prosecution is in issue as a cause for the forfeiture of such property."

In the case at bar, a libel of condemnation was filed against 17 drums of alcohol seized on the permittee's premises on November 7, 1936, being the same day upon which certain of the records and papers herein involved were seized by the government agents. When this matter came before the District Court, a decree was entered dismissing the libel on the third and fourth counts thereof, which counts involved the 17 drums of alcohol above mentioned. The libel is set forth in R., page 25. The docket entries in this proceeding are set forth in R., page 13 and the decree of forfeiture therein is set forth in R., page 10. In that decree, it is recited, *inter alia,*

> "* * * it appearing that there is not sufficient evidence to warrant the forfeiture of the articles listed under the third and fourth counts of the libel. * * *"

It is respectfully contended that this decree was binding, not only upon the parties to that proceeding, but to their privies as well. That the seizure of the alcohol was a part of the transactions involved in the seizing of the

books and papers and that this decree renders *res adjudicata* the question of the unlawfulness of the seizures.

Conclusion.

In conclusion it may be pertinent to advert to the opinion of Circuit Judge Coxe in *Flagg* v. *United States,* 233 Fed. 481, in speaking of the Fourth and Fifth Amendments to the constitution in which he said *inter alia:*

> "These amendments were intended to safeguard the rights of the people of the United States against the encroachments of unlawful and arbitrary power and to preserve the rights of the humblest as well as the most powerful citizen. They were passed to perpetuate in our law the English doctrine proclaimed by Sir Edward Coke and eloquently reasserted by Chatham in his memorable address on the Excise Bill, as follows:
>
> > 'The poorest man may in his cottage bid defiance to all the forces of the crown; it may be frail, its roof may shake, the wind may blow through it; the storm may enter, the rain may enter; but the king of England cannot enter; all his forces dare not cross the threshold of the ruined tenement.'
>
> "What becomes of this defendant, important as it is, sinks into insignificance when compared with the right of the people of the United States to be protected from unlawful search."

In the instant case, while the petitioners herein may be of comparative insignificance and their cause, one of no great consequence to any one but themselves, still, the effect of the decision of the Court below is of great importance because it may result in placing a limitation on the

right of the people of the United States to be protected from unlawful search and seizure.

It is respectfully submitted that the prayer of the petition herein be granted.

Respectfully submitted,

HARLAN BESSON,
Of Counsel with Petitioners.

HARLAN BESSON,
O. J. PELLET,
Of Counsel.

APPENDIX.

Regulations 3, Article 167:

"All permits and authorizations given and effective under the provisions of Title III of the national prohibition act and these regulations are on the condition and with the understanding that the *operations which* they authorize shall at any time within the usual business hours or at any other time when operations are carried on be *subject to inspection by an officer* of the Bureau of Industrial Alcohol or prohibition officer as to any requirement of the internal revenue or prohibition laws for the purposes authorized in section 34 of the national prohibition act, and any denial of or interference with such inspection will be deemed grounds for citation for revocation.

"Whenever a manufacturer qualified to use specially denatured alcohol proposes to operate at hours other than between 7 o'clock a.m. and 6 o'clock p.m. or on Sundays and legal holidays, notice of intention to manufacture shall be first submitted to the supervisor and his approval therefor obtained." (Italics by counsel.)

Regulations 3, Article 148:

"Each manufacturer using specially denatured alcohol must keep Form 1482, in triplicate, covering his transactions for each month. Such form must be signed by a duly authorized person and must show all alcohol on hand, received, used, or recovered, the name by classes of the article or articles manufactured, and the quantity and formula of specially denatured alcohol used. One copy of the Form 1482 shall be retained by the manufacturer as a permanent record and shall be open to inspection by Government officers during the usual business hours. * * *

"Persons holding permits to use specially denatured alcohol in excess of 100 wine gallons per quarter must keep a permanent record showing the following data:

(1) Amount of each formula of denatured alcohol received, the date and hour of receipt if delivered by truck, and the serial numbers of the packages.

(2) Amount of denatured alcohol of each formula on hand at all times.

(3) Names of products in which each formula of denatured alcohol is used.

(4) Number of gallons, or amount otherwise expressed, of each separate product manufactured, together with the names and addresses of persons to whom such products are sold and delivered.

(5) The names and addresses of all persons from whom have been purchased oils, chemicals, and other ingredients used for manufacturing preparations with specially denatured alcohol, together with the original invoices showing such purchases.

"Such records must be kept complete and up to date for a period of three years, and must at all times during regular business hours be open to inspection by Government officers. No particular form of record will be prescribed, but the data herein indicated must be ascertainable from the records and invoices kept by the manufacturer."

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287177—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 670

SANA LABORATORIES INC., JAMES A. IORIO, AND EDWARD JAMES IORIO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the District Court denying petitioner's motion to suppress evidence appears at R. 5–7. The opinion of the Circuit Court of Appeals (R. 36–39) is reported in 115 F. (2d) 717.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 6, 1940 (R. 39), and a petition for rehearing (R. 40–47) was denied December 2, 1940 (R. 48). The petition for a writ of cer-

tiorari was filed January 4, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the District Court erred in refusing to suppress evidence obtained by Government agents from records of petitioner Sana Laboratories, Inc., which the latter was required, pursuant to regulations, to keep and make available for inspection by such agents.

2. Whether a prior decision of the District Court that the evidence was insufficient to warrant forfeiture of certain alcohol seized on the premises of petitioner Sana Laboratories, Inc., was *res judicata* upon the issue of the alleged unlawfulness of the seizure by the Government agents of certain of the corporation's record.

STATEMENT

On December 3, 1936, the petitioners, together with three other persons, filed in the District Court for the District of New Jersey a petition [1] seeking the suppression of all evidence obtained as a result of a search of the premises of the petitioner Sana Laboratories, Inc., on November 7, 1936, and for the return of all books and records belonging to them (R. 12). The facts relating to the obtaining of the evidence and the records, which are summa-

[1] This petition is not contained in the printed record.

rized in the opinion of the Circuit Court of Appeals (R. 36), are, briefly, as follows:

Petitioner Sana Laboratories, Inc., was a permittee under Title III of the National Prohibition Act authorized to withdraw specially denatured alcohol used by it in the preparation of medical and chemical products (R. 36). An Alcohol Tax Unit agent testified that he watched the premises of that petitioner from Monday, November 2, 1936, through Friday, November 6, and on the latter date seized a truck which had removed from the corporation's plant six drums of denatured alcohol, the serial numbers of which had been obliterated (T. 21–23).[2] The following morning, Saturday, November 7, this agent and another agent went to the corporation's plant and were admitted by a watchman at about 8 o'clock (T. 27–28, 42–43). They requested petitioner James Iorio to come to the plant (T. 49–50), and asked him if he knew where the manufacturing records were kept (T. 52). Iorio was unable to locate them (T. 53). Miss Losick, the corporation's bookkeeper (T. 60), came to the plant at about 10 o'clock (T. 58–59, 79). She

[2] Pursuant to stipulation (R. 54), the printed record in this case consists only of certain appendices to the briefs of both sides in the Circuit Court of Appeals, together with the proceedings in that court. The facts in this statement, unless otherwise indicated, are taken from the typewritten transcript of the testimony at the hearing before the District Court on the petition to suppress evidence. A certified copy of this transcript is on file with the Clerk of this Court and will be referred to in this brief by the symbol "T."

located the purchase and sales books and the manufacturing records of the corporation (T. 53), which the agents took and for which they gave her a receipt (T. 59, 107–108). The two agents, in their testimony, several times stated that James Iorio told Miss Losick to give them anything they needed, and one of them in his testimony, on one occasion, said that Miss Losick told Iorio to give the agents whatever they needed (T. 53, 58, 59–60, 109–110).[3] The particular records taken were ones which the corporation was required to keep (T. 59). The agents also seized a quantity of specially denatured alcohol which was on the premises and gave Miss Losick a receipt for it (T. 54–55). Several persons, including James Iorio, were arrested (R. 17).

On Monday, November 9, the agents returned to the plant for the purpose of taking inventory of ingredients used in the manufacture of preparations containing denatured alcohol pursuant to the corporation's permit (T. 87–89). They collected certain invoices covering the purchase of such materials and, when James Iorio told them not to touch anything until he could consult his attorney, the agents placed the invoices in a sealed box and gave the box to Iorio (T. 81–83). He later agreed to give the agents photostatic copies of the invoices, stating that the originals were required to be kept

[3] The printed record contains extracts from the testimony of one of the agents stating that James Iorio instructed Miss Losick to give the agents all the records that they would need (R. 19, 53).

on the premises (T. 83, 89–91). Thereafter, according to the testimony of the agents, Iorio called his attorney and subsequently agreed to give, and did give, the sealed box containing the invoices to the agents on Tuesday, November 10 (T. 84, 86, 88, 91–92).

Petitioners James Iorio and Edward Iorio testified in support of the petition. The former admitted that he told the agents they could have photostatic copies of the invoices, but stated that he submitted under protest to the taking of the originals (T. 117, 129–132); while Edward said that he objected to the taking of the records but was told by his attorney that if the agents "have to take them you can't do anything about it" (T. 142, R. 51).

Following the hearing the District Court on June 10, 1940, denied the motion to suppress the evidence obtained from the records in question, but ordered that the books and papers themselves be surrendered to petitioner's attorneys "subject to inspection by the Government on request at any reasonable time or times * * *" (R. 5–7, 8–9). On appeal to the Circuit Court of Appeals for the Third Circuit the judgment of the District Court was unanimously affirmed (R. 36–39) and rehearing denied (R. 48).

On March 2, 1938, the District Court in which the petition to suppress evidence was filed dismissed, on the ground that the evidence was insufficient, those counts of a libel theretofore filed by the Gov-

ernment which sought the forfeiture of the alcohol seized on the premises of petitioner corporation (R. 10–11, 13, 26–27).

On March 31, 1938, the petitioners and others were indicted in the same District Court for conspiring to defraud the United States of taxes on specially denatured alcohol (R. 30–33). Docket entries indicate that this indictment is still pending (R. 33–34).

ARGUMENT

I

Petitioners contend that the Alcohol Tax Unit agents had no authority to seize the records in question without a search warrant; that the unlawful seizure made the agents trespassers *ab initio,* and rendered their entry on the premises unlawful; and that the records having been unlawfully seized, the use of them, or information obtained from them, should be suppressed. They also assert that no consent was given to the taking of the records, and that if consent was given it was involuntary. We submit that there is no merit in the petitioners' contentions.

1. At the outset, it should be noted that petitioners James and Edward Iorio had no standing to question the legality of the search and seizure. It is apparent from the testimony of these two petitioners that the records in question belong to the corporation and not to them (T. 116, 133, 143). And the premises upon which the seizure was made

were, of course, premises occupied by the corporation. It has been uniformly and repeatedly held that the guaranty of the Fourth Amendment against unreasonable search and seizure is a personal right or privilege, available only to those who claim ownership or possession of the premises invaded, or ownership of the property seized.[4]

2. Moreover, the District Court specifically found as facts, from the testimony at the hearing, that the agents were given permission to remove the records from the plant and that this permission was voluntarily given (R. 6–7). Clearly, the testimony of the agents that petitioner James Iorio and Miss Losick stated that the agents were to be given all of the records that they needed (R. 19, 53; T. 53, 58–60, 109–111), and that James Iorio agreed first to give the agents photostatic copies of the invoices and then to give them the sealed box containing the invoices (T. 83, 89–92) was amply sufficient to warrant the finding that consent was given. It is true that the petitioners assert that both James and Edward Iorio "who were alleged to have been the

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[4] *Whitcombe* v. *United States*, 90 F. (2d) 290, 293 (C. C. A. 3d), certiorari denied, 302 U. S. 759; *United States* v. *DeVasto*, 52 F. (2d) 26, 27–29 (C. C. A. 2d), certiorari denied, 284 U. S. 678; *Kelley* v. *United States*, 61 F. (2d) 843, 845–846 (C. C. A. 8th); *Newingham* v. *United States*, 4 F. (2d) 490, 492–493 (C. C. A. 3d), certiorari denied, 268 U. S. 703; *A. Guckenheimer & Bros. Co.* v. *United States*, 3 F. (2d) 786, 789 (C. C. A. 3d), certiorari denied, 268 U. S. 688; *Haywood* v. *United States*, 268 Fed. 795, 804 (C. C. A. 7th).

persons giving consent testified that no consent was given" (Pet. 24), but this merely created a conflict in the evidence which it was within the province of the District Court to resolve. There is no basis for any view that the permission to the agents to take the records was in anywise involuntary, for, as the District Court pointed out, "The petitioners knew that the Inspectors had a right to examine the documents in question,[5] and taking the position that they were innocent of any wrongdoing, what was more natural than to voluntarily turn the papers over to the authorities? They had received the advice of counsel in the interim and acted with full knowledge as to their rights" (R. 7). The conclusions which the District Court reached upon the factual questions of consent and voluntariness were obviously not clearly erroneous and, therefore, conclusive upon these issues (see Rule 52, Federal Rules of Civil Procedure). Since the papers were surrendered voluntarily to the agents, there was no seizure in violation of the Fourth Amendment.[6]

3. In any event, it is clear that the petition to suppress evidence was properly denied. There can

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[5] See discussion, p. 9, *infra*.

[6] *A. Guckenheimer & Bros. Co.* v. *United States*, *supra*, at p. 789; *Howard* v. *United States*, 75 F. (2d) 562, 563 (C. C. A. 7th), certiorari denied, 295 U. S. 740; *Lisansky* v. *United States*, 31 F. (2d) 846, 851 (C. C. A. 4th), certiorari denied, 279 U. S. 873; *Schutte* v. *United States*, 21 F. (2d) 830 (C. C. A. 6th); *Dillon* v. *United States*, 279 Fed. 639, 646–647 (C .C. A. 2d).

be no doubt, in view of the provisions of Articles 148 and 167 of Treasury Department Regulations No. 3 (Appendix, *infra,* pp. 12–14), that the Circuit Court of Appeals correctly held that there was no unlawful entry of the corporation's premises and that the agents had the right to inspect the corporate records and papers, and use the information obtained therefrom (R. 38). It is evident from the testimony that the only records and papers taken were those which the corporation was required to keep under the Regulations (T. 53, 59, 81–89, 107–108.)

The only action of the agents which may have been in excess of their authority was the removal of the records and papers from the corporation's premises, but the District Court ordered these returned (R. 8–9). Obviously, no prejudice resulted since, as has been indicated, the agents had the right to inspect the records and papers upon the corporation's premises, and thus could obtain any information which they disclosed. Clearly, as was said by the Circuit Court of Appeals, "the removal from the premises of papers which government agents were * * * entitled to inspect upon the premises did not render sacrosanct information secured from those papers because it was lawfully open to the government" (R. 38).[7]

[7] Since it is immaterial whether the records and papers were removed from the corporation's premises without authority, it is unnecessary to justify their seizure as an incident to lawful arrest.

The decisions of this Court in *Silverthorne Lumber Company* v. *United States,* 251 U. S. 385, and of Judge Learned Hand in *United States* v. *Kraus,* 270 Fed. 578 (S. D. N. Y.), are readily distinguishable. In the *Silverthorne* case there was not, as here, any right of the Government agents to inspect the corporate books and records, and here there was no forcible entry of the corporation's premises, as in the *Kraus* case.

II

Petitioners contend that the prior decision of the District Court in the libel proceeding against the alcohol seized on the corporation's premises was *res judicata* upon the issue of the alleged unlawfulness of the seizure of the corporation records.

A complete answer to this contention is, as we have heretofore shown, that it is of no moment in view of the right of inspection residing in the agents, that the records of the corporation may have been illegally removed from the premises (*supra,* p. 9). Consequently, even if it were assumed that the decision in the libel proceeding was *res judicata,* that would avail the petitioners nothing.

Moreover, the petitioners have failed to make any showing that the decree in the libel proceeding directing the return of the alcohol seized on the corporation's premises was in any wise predicated upon the legality of that seizure. The decree, in denying forfeiture, merely stated that "there is

not sufficient evidence to warrant the forfeiture of the articles * * *" (R. 10). It is settled that, before the doctrine of *res judicata* can be applied, it must appear from the face of the record or by extrinsic evidence (of which there is none in the present case) that the precise question involved in the subsequent proceeding was determined in the prior suit. *Russell* v. *Place,* 94 U. S. 606; *Oklahoma* v. *Texas,* 256 U. S. 70.

CONCLUSION

The petition for writ of certiorari presents no important question of Federal law and there is involved no conflict of decisions. We therefore respectfully submit that it should be denied.

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JANUARY 1941.

APPENDIX

Regulations Involved

Article 148 of Treasury Department Regulations No. 3 provide in part:

> Each manufacturer using specially denatured alcohol must keep Form 1482, in triplicate, covering his transactions for each month. Such form must be signed by a duly authorized person and must show all alcohol on hand, received, used, or recovered, the name by classes of the article or articles manufactured, and the quantity and formula of specially denatured alcohol used. One copy of the Form 1482 shall be retained by the manufacturer as a permanent record and shall be open to inspection by Government officers during the usual business hours. * * *
>
> Persons holding permits to use specially denatured alcohol in excess of 100 wine gallons per quarter [8] must keep a permanent record showing the following data:
>
> (1) Amount of each formula of denatured alcohol received, the date and hour of receipt if delivered by truck, and the serial numbers of the packages.
>
> (2) Amount of denatured alcohol of each formula on hand at all times.

[8] We are advised by the Alcohol Tax Unit that Permit No. S.D.A.-N.J.-1012 held by petitioner Sana Laboratories, Inc. (Pet. 3), authorized it to use over 1,200 wine gallons of specially denatured alcohol per month.

(3) Names of products in which each formula of denatured alcohol is used.

(4) Number of gallons, or amount otherwise expressed, of each separate product manufactured, together with the names and addresses of persons to whom such products are sold and delivered.

(5) The names and addresses of all persons from whom have been purchased oils, chemicals, and other ingredients used for manufacturing preparations with specially denatured alcohol, together with the original invoices showing such purchases.

Such records must be kept complete and up-to-date for a period of three years, and must at all times during regular business hours be open to inspection by Government officers. No particular form of record will be prescribed, but the data herein indicated must be ascertainable from the records and invoices kept by the manufacturer.

Article 167 of Treasury Department Regulations No. 3 provides:

> All permits and authorizations given and effective under the provisions of Title III of the national prohibition act and these regulations are on the condition and with the understanding that the operations which they authorize shall at any time within the usual business hours or at any other time when operations are carried on be subject to inspection by any officer of the Bureau of Industrial Alcohol or prohibition officer as to any requirement of the internal revenue or prohibition laws for the purposes authorized in section 34 of the national prohibition act, and any denial of or interference with such inspection will be deemed grounds for citation for revocation.

Whenever a manufacturer qualified to use specially denatured alcohol proposes to operate at hours other than between 7 o'clock a. m. and 6 o'clock p. m. or on Sundays and legal holidays, notice of intention to manufacture shall be first submitted to the supervisor and his approval therefor obtained.

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